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SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 March 1996, at 3 p.m.

Chairman: Mr. VERGNE SABOIA (Brazil)

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The meeting was called to order at 3.10 p.m.

STATEMENT BY MRS. MADELEINE K. ALBRIGHT, AMBASSADOR, PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS

1. Mrs. ALBRIGHT (United States of America) said that, as the twenty-first century dawned, mankind was once again filled with the same hopes as at the start of the twentieth century. If those hopes were not to be dashed as they had been then, a framework of institutions and legal standards must be built to strengthen the elements within every society that found their inspiration in the Universal Declaration of Human Rights. It was therefore important for the whole world to support the Commission on Human Rights, which had become an indispensable forum for information and dialogue in the service of human rights.

2. Progress in the defence of human rights had indeed been made as a result of action by United Nations bodies, regional organizations or non-governmental organizations (NGOs). The Fourth World Conference on Women in Beijing had reasserted the need to develop the effective participation of women in all aspects of life in society and to put an end to violence against women. The efforts of all those who believed in peace in order to combat the barbarous forces of terror could not but be welcome. Nevertheless, violations of fundamental human rights continued to occur too often, in too many places. They were not inevitable, since they resulted from a choice. In order to put an end to them, that choice must be redirected towards greater respect for the dignity and worth of every human being. That should be the Commission's mandate.

3. While it was true that economic and political rights were of equal importance and were equally worthy of the Commission's attention, there could be no doubt that in the contemporary world the totalitarian or authoritarian impulse remained a dominant source of human rights violations and was an enemy not only to political freedom but to economic and social development as well. As the Government of the United States had frequently said in many forums, democratic practices not only protected individuals but allowed whole communities to flourish and grow. That had been demonstrated in the course of the previous decade by the various countries, in the five continents, which had embraced more open economic and political systems.

4. Unfortunately, that growing democratic trend was not universal. Too many Governments continued to rely not on the consent of those they governed but on coercion. It was thus normal for the Commission, which had been established to provide a voice for those denied the right to speak by their own Governments, to repudiate those Governments and endeavour to protect the victims of repression - the political prisoners of Cuba or China, those doing forced labour in Burma, the victims of torture in Nigeria or Iraq or the subjects of religious persecution in the Sudan or Iran. No Government should be surprised by the Commission's interest in the human rights situation in specific countries, since, under the Charter of the United Nations, each nation had affirmed its faith in fundamental human rights and each had assumed an obligation not to deprive individuals within its jurisdiction of those

rights. The Charter admitted no exceptions and there were no grounds of history, culture, economic condition or sovereign prerogative that excused the theft of human dignity.

5. While dictatorial regimes remained a major source of human rights violations around the world, a second source was intolerance in all its forms, where the violator was as likely to be an armed faction as a Government. With the conclusion of the cold war, sentiments of ethnic or national identity had re-emerged; when exploited by ambitious and ruthless leaders, as in the Balkans, Central Africa and the Caucasus, they had produced terrible bloodshed the main victims of which had been civilians, killed not for what they had done but simply for who they were. The sense of group identity called "nationalism" could permit a group's cultural legacy to be preserved or could unite its members in defence of a common good, but taken to extremes it could also become hatred of "the other" and lead to violence. Loyalty to the nation to which a person belonged did not justify the betrayal of universal values. That was a fundamental principle of the Charter of the United Nations and of civilization itself. The founders of the United Nations, like the founders of the United States, viewed the nation as an instrument of law, justice, liberty and tolerance, not of exclusion. After the pogroms of Stalin, the death camps of Hitler, the butchery in Rwanda and the massacre in Srebrenica, it was time for the world to understand that neither blood, nor language, nor history, nor national characteristics were as pure as the apostles of separatism would have it believe, and that what mattered most were not the small distinctions which divided people but the common humanity that bound them.

6. As the twenty-first century dawned, the principal task of the international community would be to cool the embers of ethnic conflict and establish models for easing fears and reconciling ambitions within a broader framework of support for human rights. To that end, it should support and continue the work of OSCE and other bodies in order to enhance respect for the rights of minorities, look for guidance to the new democracies, especially in central and eastern Europe, strengthen United Nations and regional peace-keeping capabilities and support the work of the International Criminal Tribunals for the prosecution of persons responsible for war crimes in Rwanda and the former Yugoslavia. Finally, the international community should encourage the parties to the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton) to live up to the letter and spirit of the Agreement, which included a core of new institutions and arrangements designed to safeguard the rights of all Bosnians, regardless of ethnicity.

7. The Universal Declaration of Human Rights drew upon the moral traditions of every great culture on Earth; the application of its provisions worldwide should thus be of concern to all countries. The Government of the United States therefore appealed to all Governments to work together, as the Charter of the United Nations said, "to promote social progress and better standards of life in larger freedom", to reject despotism and condemn intolerance, to support all those who laboured to reconcile enemies, promote justice and elevate the human spirit, to respect the dignity of their citizens and all others who came within their power and to devise a framework of law and humanity that would secure for future generations in the next century the peace so often lacking in the twentieth century.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1996/18-21, 108, 120)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 7) (continued) (E/CN.4/1996/26, 27)

8. Mr. TORELLA di ROMAGNANO (Italy), speaking on behalf of the European Union under agenda item 4, said that the following countries with links with the European Union had expressed the wish to be associated with his statement: Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Malta, Poland, Romania, Slovakia. He welcomed the progress towards achieving peace in the Middle East which had taken the form of the redeployment by Israel of its military forces, a transfer of powers to the Palestinian Authority and the organization of Palestinian general elections on 20 January 1996. The European Union, which had played a primary role in the observer operations in connection with the elections, could not but be satisfied with their success. It now devolved on the Palestinian people and the Palestinian Authority, who could depend on support from the European Union, to make the most of that success in order to strengthen the rule of law and guarantee respect for human rights in the territories.

9. As had been reasserted at the Sharm-el-Sheikh summit, the European Union strongly condemned all acts of terrorism or violence, but stressed that the struggle against terrorism must be conducted with full respect for human rights. It considered that the human rights situation in the occupied territories continued to arouse some concern and should not be ignored.

10. The European Union took note of the Special Rapporteur's concerns regarding the terms of his mandate. Like him, it considered that work on establishing Israeli settlements should cease completely, and that the commitments made on both sides should be respected.

11. The European Union attached paramount importance to the forthcoming negotiations aimed at defining the final status of the occupied territories; where Jerusalem was concerned, until a solution was found, nothing should be done that might call in question the status quo. Until the matter was finally settled, the Union would continue to provide financial support for the efforts in progress; there was no need to remind participants that the European Union was the principal supplier of financial assistance to the Palestinian people.

12. As had been said on the occasion of the recent Euro-Mediterranean Ministerial Conference in Barcelona, peace in the Middle East must be fair and comprehensive, and considerable progress would need to be made in the Israeli-Syrian and Israeli-Lebanese sectors of the peace process. In that regard, the European Union recalled its commitment to Security Council resolution 425 (1978).

13. Mr. MEGHLAOUI (Algeria) considered it vital that the agreements reached in the context of the Middle East peace process should be implemented within the established deadline and in all good faith. In that region, as elsewhere, it was time for the international legitimacy to which the resolutions of the General Assembly and the Security Council referred to prevail. The

Palestinian people must recover its legitimate national rights and enjoy full independence within its own State, with Al-Quds al-Sharif as its capital. Welcoming the elections held in January, he expressed the hope that the international community would help the Palestinian people to rebuild its war-stricken country.

14. He shared nearly all conclusions and recommendations of the Special Rapporteur concerning the situation of human rights in the Palestinian territories occupied since 1967. The Commission must draw conclusions from Israel's persistent refusal to comply with the resolutions calling upon it to put an end to its many human rights violations, which had been well documented by the Special Rapporteur.

15. Turning to the question of the right to self-determination and independence enshrined in General Assembly resolution 1514 (XV), he recalled that the Saharan people had been living under occupation or in exile for more than 20 years. It was regrettable that the date for the holding of the referendum for self-determination provided for in the settlement plan of 20 August 1988 had been repeatedly postponed. In resolution 1042 (1996), the Security Council had now set that date at 31 May 1996. In order to facilitate the implementation of the settlement plan, his Government was in favour of direct discussions between the two parties to the conflict. It was prepared to give its full support to such an undertaking and hoped that Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO) would follow the way of dialogue. The Maghreb must be built on solid bases and in the interest of all its peoples.

16. Mr. HAUGESTAD (Norway) said that the peace process initiated in the Middle East had brought almost revolutionary changes to the region and had laid the foundations for self-determination and for the democratization of society, which were prerequisites for the enjoyment of human rights.

17. The peace process was currently threatened by acts of terror which created a climate of fear and insecurity. It was important that the mandate of the Special Rapporteur on the situation of human rights in the occupied territories should properly address the reality of the process. The mandate should cover both the self-governing and the occupied territories and should be carried out in close cooperation with the Palestinian and Israeli authorities. It should also be reviewed annually in order to take account of the rapidly changing circumstances.

18. An effective strategy to combat terrorism within the rule of law was called for. His Government believed that effective measures compatible with human rights and fundamental freedoms could be found. It fully subscribed to the conclusions of the International Summit of Peacemakers in Sharm-El-Sheikh and supported the Israeli Prime Minister, Mr. Peres, and the Palestinian President, Mr. Arafat, in their efforts to combat terrorism and bring the peace process to a successful conclusion.

19. Mr. BENJELLOUN TOUIMI (Observer for Morocco) welcomed the fact that both Palestinians and Israelis remained firmly committed to advancing the peace process in the Middle East despite the tragic events which had marked 1995 and the start of 1996. The international community must provide firm moral,

political and especially economic support to the parties which had taken a gamble on peace. The strengthening of the peace process should go hand in hand with scrupulous observance of human rights, and it was vital in that connection that the question of the Israeli settlements should be resolved, the practice of collective punishments abandoned, access to places of worship ensured and better treatment given to prisoners.

20. He was confident that Israelis and Palestinians would find an appropriate response to the questions which divided them and also hoped that the Syrian-Israeli and Lebanese-Israeli negotiations would achieve results which would be acceptable to all parties, on the basis of the relevant resolutions of the General Assembly and the Security Council, particularly Security Council resolution 425 (1978).

21. Following the comments made by the representative of Algeria on the situation in Western Sahara, he wished to point out that he had given a lengthy explanation in that regard to the Executive Committee of the Office of the High Commissioner for Refugees; he also hoped that the Algerian authorities would themselves set an example of the dialogue which they recommended to others.

22. Mr. TABIBI (World Islamic Call Society) recalled that the right to self-determination was one of the basic principles of modern international law, and regretted that it was still widely flouted, especially in the Islamic world. The situation in Chechnya, in Afghanistan, in Palestine, in Kashmir, in Bosnia and Herzegovina and in many other countries was known to all. Since justice was an essential part of peace-keeping, it would be appropriate for an international criminal tribunal to try the perpetrators of the atrocities to which the peoples of those countries were subjected.

23. The international community should be careful not to neglect any situation in which the right of peoples to self-determination was called in question. For example, it should not neglect the dramatic state of affairs in Afghanistan, which affected millions of people. It should spare no effort to keep the peace and ensure respect for the principles of international law.

24. Mrs. LAUWEREINS (France Libertés - Fondation Danielle Mitterrand) recalled that Indonesia had been occupying East Timor for the past 20 years and that for 20 years the list of human rights violations in that country had been growing: arbitrary arrests, torture, inhuman treatment, political trials, murder of civilians, massacres and disappearances. In other words, human rights and the right of peoples to self-determination had been flouted for 20 years, during which time Indonesia had totally disregarded the United Nations resolutions on the subject. The necessary steps should be taken to put an end to the violations in East Timor.

25. In view of the fact that Indonesia was not threatened and had no known real or potential enemies, her organization hoped that all States Members of the United Nations would make a solemn commitment to cease supplying arms to that country and that they would take into consideration the recent peaceful activities of the people of East Timor designed to draw international attention to their country. Her organization also requested that human rights organizations should be permitted access to the territory of East Timor, and

that a United Nations office should be set up in Dili, the capital. The Commission should urge its members to take in political refugees from East Timor, as Portugal had done. It was also essential for East Timor's citizens to be involved in all discussions concerning their future, that Monsignor Belo should be present at those negotiations and that Mr. Xanana Gusmao should be released in order to take part in them.

26. Her organization denounced the blocking of the referendum process in Western Sahara as a result of the attitude of the Moroccan Government, which continued to transfer Moroccan populations to the territories occupied in order to increase the number of pro-Government voters. There was a lack of transparency in the work of the Identification Commission and the identification process was the main hindrance to the holding of the referendum. It was for that reason that the Secretary-General of the United Nations, in his most recent report (S/1996/43), had stressed the importance of transparency in the work of identification and the importance of the negotiations between Western Sahara and Morocco in unblocking the situation and arriving at an agreement. He had also encouraged States and institutions which could do so to take initiatives to bring the two parties to the negotiating table. The Security Council, for its part, in resolution 1042 (1996), had appealed for dialogue between the Frente POLISARIO and the Government of Morocco in order to facilitate the implementation of the settlement plan and had extended the mandate of MINURSO until 31 May 1996. In order to avoid a resumption of the armed conflict, it was vital to bring the two parties face to face in order to help them to overcome their differences on the issue of identification and avoid the withdrawal of MINURSO, whose presence should inhibit human rights violations.

27. Her organization therefore called upon the Commission on Human Rights to do everything in its power to further the settlement of the conflict, bearing in mind the right of the Saharan people to self-determination.

28. Mr. FELNER (International Human Rights Law Group) stated that he was the Deputy Director of B'Tselem, the leading Israeli NGO monitoring the human rights situation in the occupied territories. That situation had seriously deteriorated since the beginning of the peace process in 1993 on account of the numerous violations of human rights by Israel, which were summarized in the report of the Special Rapporteur (E/CN.4/1996/18). Of particular concern was the recent drafting of a bill which would provide legal sanction for the torture and ill-treatment used by Israel's security agents.

29. Israel claimed that such measures were necessary to ensure the security of its citizens, increasingly threatened by recent attacks. However, security considerations could not justify the stringent punitive measures recently taken by Israel, such as detention of the family members of the perpetrators of attacks, the demolition of their homes, curfews, closure of towns and villages and the closing-down of educational institutions. None of those measures took account of the basic legal tenet of individual criminal responsibility which Israel respected when Israelis committed crimes against Palestinian citizens but which it did not hesitate to ignore in the case of Palestinians. Moreover, there was no evidence that those measures were effective as a deterrent of future attacks on the Israeli population; on the

contrary, they were liable to drive increasingly desperate Palestinians into the ranks of extremist organizations such as Hamas and the Islamic Jihad.

30. The other argument put forward to justify human rights violations in the occupied territories was that during the interim period in the peace process human rights were inevitably sacrificed for the sake of peace. For the victims of those violations, however, only the current painful reality counted, and could not be modified by the prospect of future peace. Peace based on violations of human rights could only be fragile and vulnerable.

31. His organization also wished to point out that human rights violations were also perpetrated by the Palestinian Authority in the areas under its control - in particular, arbitrary arrests, detention without charge or trial, torture during interrogations and unfair trials - and denounced the attempts of the Palestinian Authority to intimidate and silence its critics, particularly journalists.

32. It was imperative that the international community should ensure that the protection of the human rights of the inhabitants of the occupied territories became an integral part of the peace process. It was time to recognize that security could be protected without violating basic human rights and that equitable coexistence between Israelis and Palestinians based on the mutual respect of fundamental human rights was the only basis for a just and lasting peace.

33. Mr. DIENG (International Commission of Jurists) welcomed the fact that the Special Rapporteur on the situation of human rights in the occupied territories had been able to visit the Gaza Strip and discuss the human rights situation with Palestinian officials. Israeli cooperation would also, however, have been necessary, and he regretted its absence. His organization was aware of the problems to which the atrocious suicide bomb attacks in Israel in recent months had given rise - attacks which it had severely condemned - but it was persuaded that a lasting peace in the region required human rights to be preserved. In that connection, it noted with concern the restrictive measures which the Israeli Government had decided to apply to the Palestinian community in response to those attacks. Those measures directly impinged on the right to work and the freedom of movement of the Palestinians, and caused them serious economic and personal hardship, in some instances even putting their lives in jeopardy. His organization reiterated the concerns expressed about the use of torture and the elaboration of an Israeli bill that would legalize it. It stressed once again that the measures taken by Israel must be consistent with fundamental human rights and humanitarian law.

34. Another area of concern was the administration of justice in the autonomous areas under the Palestinian Authority. Several persons had been detained without trial and some had died in custody. Special courts which conducted trials in camera had been established. Most of those measures had been taken in response to pressure from Israel and even the United States of America. The inadequate experience of the Palestinian Authority in the conduct of public affairs made the situation worse. However, the Commission appreciated its willingness to collaborate with the Special Rapporteur and endorsed the latter's recommendation that his mandate should be expanded to deal with the new realities (E/CN.4/1996/18, para. 40). The Palestinian

Authority could certainly benefit from the valuable experience of the local NGOs, which had helped the Palestinians in the Gaza Strip and the West Bank to survive throughout the period of occupation.

35. Mr. TEITELBAUM (American Association of Jurists) said that he would like first to point out that the decision taken by the Commission concerning the organization of the debate drastically curtailed NGO participation; he hoped that that most regrettable decision would be rescinded.

36. With reference to the issues under consideration, his Association noted that the referendum on self-determination in Western Sahara continued to be deferred on account of Morocco's bad faith in applying the terms of the settlement plan by endeavouring to have tens of thousands of Moroccan settlers included in the electorate and by its constant acts of repression against the advocates of self-determination. It noted the inadequacy of infrastructure in the field and the absence of a firm stand on the part of the United Nations authorities taking part in the process vis-à-vis the delaying tactics employed by Morocco to obstruct the progress of the operations. It suggested that the Commission on Human Rights should adopt a more emphatic resolution than it had in 1995, stressing the responsibilities of the Moroccan Government, the logistical shortcomings of MINURSO and the excessive indulgence of the Secretary-General towards the activities of the Moroccan authorities.

37. Another matter on which an energetic reaction was required from the Commission was the question of Chechnya. In the face of the neo-colonialist aggression against the Chechen people, the great Powers had remained silent in the hope that the period of "pacification" would not last long. Before the situation deteriorated into genocide, the Commission must unambiguously condemn the Russian intervention in Chechnya and call upon Russia to withdraw immediately the troops occupying Chechen territory.

38. The Commission should also condemn the International Monetary Fund, whose loans to Russia were helping to finance that war of extermination. The indulgence shown by the Bretton Woods institutions towards colonialist Governments which violated human rights was in fact nothing new. The World Bank had continued to negotiate with the racist Government of South Africa and the colonialist Government of Portugal in defiance of the resolutions of the United Nations General Assembly which in 1965 and 1967 had called for economic measures against those two countries. The institutions in question would continue to be incapable of playing a positive role in the area of human rights, and in particular the right to development, as long as they failed to act like true specialized agencies of the United Nations and failed to bring their policies into line with the principles of the international human rights instruments.

39. Mr. AHMAD (World Muslim Congress) said that he would like to begin by referring to the problem of Chechnya, colonized by Russia in the nineteenth century. The Chechens, an autonomous people culturally different from the Russians, who had always treated them with utter contempt, were engaged in a just struggle for self-determination but were being bloodily repressed. The only reason for Russia's desire to keep the region under its colonial

domination was the existence of oil and natural gas in the Caucasus. Under the Charter of the United Nations, however, the Chechens had an indisputable right to self-determination.

40. Another case that was disturbing in terms of human rights was that of Kosovo; the Belgrade Government had abrogated its autonomous status, depriving the 90 per cent of the population who were of Albanian origin of their civil, economic and political rights. That population, too, claimed the right of self-determination.

41. Lastly, there was the problem of Kashmir, which had been under Indian domination for 49 years. The Security Council, which had considered the problem in detail, had expressly stated that the State of Jammu and Kashmir was not part of India and that the question could only be settled by impartial elections under United Nations auspices. Both Pakistan and India had accepted that solution, which showed that India recognized officially that Kashmir was not Indian territory. That had not prevented it, however, from carrying out mock elections, setting up a succession of puppet governments in Kashmir and using mercenaries to endeavour to discredit the genuine liberation movement. The so-called "accession" of Kashmir to India in 1947 was fictitious. In the absence of true prior consultation of the people of Kashmir, any agreement of that type must be regarded as null and void since it contradicted the principle of self-determination.

42. In the light of those three cases, it should once again be emphasized that the right of peoples to self-determination was part of jus cogens, which was binding on all States. Under article 19 of the draft convention on State responsibility which the International Law Commission was preparing, any grave breach of that right would be regarded as an international crime. The General Assembly, in its resolution 50/139 of 21 December 1995, had requested the Commission on Human Rights to continue to give special attention to the violation of the right to self-determination, and the Commission should regard it as its duty to carry out that mission by helping the peoples concerned in their just struggle.

43. The CHAIRMAN invited those delegations which wished to do so to exercise their right of reply.

44. Mr. ZHANG Yishan (China) said he regretted the fact that the Permanent Representative of the United States of America to the United Nations should have exploited her invitation to address the Commission on Human Rights in order to make accusations against sovereign States. That was something the United States was in the habit of doing and it frequently made attacks of that kind in the name of human rights and democracy. The twenty-first century could well see the end of the hegemony of that super-Power, however, which should learn, before it was too late, to take account of the new international situation.

45. Mrs. HERNANDEZ QUESADA (Cuba) said that, before posing as a vigilante, the United States should examine itself self-critically. By starving the people of Cuba, was it not violating a fundamental human right, the right to life? The Permanent Representative of the United States to the United Nations had been invited by the Commission to speak on human rights, not to make political accusations.

46. Mrs. FERRARO (United States of America) said she was happy to note that the representatives of China and Cuba had listened attentively to the Permanent Representative's statement. They must also have heard, however, that the principles of the Charter of the United Nations applied to everyone, universally and without exception. In that respect, she could assure the representative of China that his country would not be forgotten when agenda item 10 was considered.

47. Mr. PANG Sen (China) said he found it paradoxical that the United States should pose as a great champion of the law when it did not even respect the Commission and engaged in acts contrary to international law such as seizing foreign representatives on their own territory.

48. Mr. SALMAN (Observer for Iraq) said that the United States, which set itself up as a judge of human rights issues, was the first to violate those rights. By putting pressure on the United Nations for the past five years to maintain the blockade against Iraq, thus depriving the entire population of food and medicine, it was violating one of the most fundamental human rights, the right to life.

The meeting rose at 5 p.m.